

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JASON CLARK, <i>Pro Se</i> ,)	Case No.: 1:09 CV 1926
)	
Petitioner)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
KEITH SMITH, WARDEN,)	
)	
Respondent)	<u>ORDER</u>

On August 17, 2009, Petitioner Jason Clark, *pro se* (“Clark”), filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, challenging the constitutionality of his conviction for four separate counts of rape and his classification as a sexual predator. (ECF No. 1.) Petitioner raised two grounds for relief in his Petition: (1) denial of due process when the state failed to prove with sufficient evidence each element of the offenses charged, and (2) violation of due process and equal protection because the sexual predator statute is unconstitutional. (*Id.* at 2.)

This case was referred to Magistrate Judge William H. Baughman for preparation of a report and recommendation. The Magistrate Judge issued his Report and Recommendation (“R&R”) on July 8, 2010, recommending that the Petition be denied in part and dismissed in part. (ECF No. 12.) Specifically, the Magistrate Judge concluded that ground one of the Petition should be denied because the state court decision constituted a reasonable application of the clearly established federal

law and ground two should be dismissed because it fails to satisfy the “in custody” requirement of 28 U.S.C. § 2254(a). (R & R at 10-17.)

As of the date of this Order, Petitioner has not filed any objections to the Report and Recommendation. By failing to do so, he has waived the right to appeal the Magistrate Judge’s recommendation. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).

The court finds that after *de novo* review of the Report and Recommendation and all other relevant documents, the Magistrate Judge’s conclusions are fully supported by the record and controlling case law. Accordingly, the court adopts as its own the Magistrate Judge’s Report and Recommendation. (ECF No. 12.) Consequently, Clark’s Petition is hereby denied in part and dismissed in part, and final judgment is entered in favor of Respondent. The court further certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability.

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.
CHIEF JUDGE
UNITED STATES DISTRICT COURT

January 31, 2011